Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Wireless Bureau and OET Seek Comment	)	DA 12-209
On Progeny's M-LMS Field Testing Report	)	WT Docket No 11-49

To: Office of the Secretary
Attn: Chief, Wireless Telecommunications Bureau
Attn: Chief, Office of Engineering and Technology

Reply to Progeny Opposition to
Request to Extend Dates for Comments and Replies

If the extension Request is not granted in full, SkyTel requests that it be granted up to the amount of time the Bureaus decices is in the public interest. However, Skytel believes the case for the Requested amount of time is fully sound, and grant of less time will likely result in a less sound record and increased chance of issues on appeal.

The Opposition, in the established style of Progeny, it first sets up a false premise, suggesting that SkyTel[1] had the Test Report and should have commenced Comments on February 1 (by an observed reference), but DA 12-209 was not issued until February 14. This discredits the Opposition from the start. As shown below, the Request is not tardy.

Procedural Defects and Violations

1. The Opposition is unauthorized. Progeny is controlled by another company, as indicated by Progeny itself and shown by an exhibit and text (page 1) in the SkyTel Reply to the Progeny Opposition to the SkyTel (partial) petition for reconsideration of the grant of Progeny's

[1] Which, again, Progeny improperly characterizes as an individual "Havens" to try to obscure serious issues raised by corporate competitors by suggesting they are a personal matter. SkyTel could do that same with good cause (unlawful corporate entities can have their shells piecred to get to the individual wrongdoers, and their supporing counsel), but refrain from it to minimize diversion from the direct FCC law issues.

waiver request. The Opposition was not submitted by the controlling company and is thus unauthorized, and should be disregarded.

2. Failure of required notice. The Progeny Opposition to the above captioned Request ("Opposition") failed to comply with the oral notice requirement under Section 1.46(c). Petitioners complied with this section. If a party is going to oppose a motion filed and noticed under this section, it also must comply with the oral notice required thereunder. The requirement has no meaning if it only applies to the motion, but not an opposition. Due to a lack of oral notice, the undersigned was not aware of the Opposition until returning to his office after business hours yesterday. The oral notice is to allow the noticed party the opportunity to quickly schedule time for a response.[2]

3. The Opposition does not refute the Request's showing that the Test Report was used in an unlawful ex parte presentations and for that reason alone, should result in the relief sought in the Request. When a party tries to "pull a fast one" and influence FCC decisions makers in a restricted proceeding by unlawful ex parte presentations, it should properly be subject to increased scrutiny, and in this case, the minimum is to subject the Test Report to the more thorough scrutiny afforded by grant of the Request. In addition, other tricks employed in the Opposition only further demonstrate this need.

Substantive Matters

In sum, the Opposition does not refute the good causes shown in the request but--reflecting that failure-- diverges into irrelevant, smokescreen, sanctionable pleading,[3] [4] and

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[2] There is no right to respond to a reply, and thus no oral notice is required, but Petitioners provide one, in any case.

[3] The undersigned is filing, outside this docket a request or sanctions against Mr. Olcott on the matter in the following footnote. He flagrantly violates section 1.52 in this regard. The Order of yesterday he cites (i) has nothing to do with ""harass[ing] Commission licensees. The SkyTel

admits to fundamental Test method and scope failures that support the need the extension Request grant.

1. Initially, the Opposition avoids the obvious: that parties with interest can challenge the acceptance of the Test Report—and the waiver grant dependent on it—in a request for reconsideration, and the inefficiencies of that vs. a more compete and sound record for an initial decision. The SkyTel entities are parties with interest and legal standing, established long ago,[5]

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entities *already hold as licensees* the spectrum in the Havens applications subject of the Order. Havens and SkyTel entities that hold that spectrum are not at odds in this matter at all (no conceivable "harrassment." The issue underlying the order is due process of law and speech rights, Fifth and First amendment issues, and that will be taken now to court. (i) This order also is specifically limited by the Commission (it backed down off of the preceding order) to the stated applications, and is not extendable to any other matter as Mr. Olcott does here, (iii) nor were any sanctions imposed but a statement of what the rules as interpreted already require (as this Order interprets) —that an pleading is not frivolous. This is the Commission attempt to create a rule by an Order for *pro se* individuals that approximates what exists for attorneys, including Mr. Olcott, in Sections 1.52 and 1.24. Putting aside the dubious nature of this rule making, there is nothing in this Order at all to help Progeny here. Its employment by Mr. Olcott of it <u>is</u> sanctionable under Section 1.52—which does apply to attorneys but does not apply to *pro se* individual petitioners. Having employed this tactic, he can now defend the motion personally under Sections 1.52 and 1.24. In addition, in this regard, the actions of counsel are those of the licensee. 47 USC § 217.

[4] This commences with divergence into a wholly irrelevant Commission Order of yesterday (that is not final, will be appealed to court due the the important legal issues involved) regarding an individual, the undersigned, where said Order *specifically limited itself* to narrow issues (whether *one late filing* barred successive reconsideraion filings of *new relevant facts*) pertaining to a few license applications *entirely unrelated to M-LMS and this docket*. Also, the undersigned is not among the holders of SkyTel A-block M-LMS licenses nationwide (which are Skybridge and Telesaurus Holdings), as Progeny of course knows. And that order of yesterday by its own terms is clearly limited to the several AMTS license applications involved. (And SkyTel in fact holds the spectrum in those applications: the contest in said Order is about due process of law, not private spectrum interests fundamentally.) *Progeny would extend that contrary to the express terms of the Order, which is itself sactionable pleading under Section 1.52.* Attorneys who resort to such practices reveal a desperately bad case, legal "practice," and client. Further, the fact is that the full Commission *accepted* the case of the undersigned and SkyTel on the core substance underlying the Order of yesterday, and that is being currently prosecuted in the Hearing under HDO FCC 11-64. This HDO's main issue is cheating in Auction 61 to due false claims to DE status and ownership —<u>the same</u> as the Progeny Disqualification Issue that the Commission has reserved against Progeny, noted above.

[5] This began with competition against Progeny in the M-LMS auctions (in which Progeny cheated SkyTel entity Telesaurus Holdings), and extends though challenges to Progeny licensing

but also need no such standing for Comments under DA 12-209[6] The Test is a condition of and is needed to make the grant of the waivers effective for actual operations. SkyTel entities have a pending petition for reconsideration of the grant of the initial, conditional waivers grant, and can amend that to challenge grant of the Test condition. It is more efficient for the FCC staff, and all the parties (even Progeny, if believes its Test can stand up to scrutiny) to create a more sound record in this Comments proceeding, than after a decision on the Test is made.

In a related point, the waiver grant imposes a *post-operation-commencement* condition not in the rules: that if Progeny uses technology and systems under the waiver grant, then even after initial Testing (which under the rule has to be in each area its M-LMS systems are being deployed- testing against existing Part 15 device systems), Progeny must amend or cease if it causes harmful interference to Part 15. That is creates an especially strong case for very careful initial testing and having the Test Report subject to substantial scrutiny, by both Commenting parties, and then by the Bureaus. This further justified grant of the Request.

2. Further, the Opposition suggests that SkyTel has already submitted its relevant Comments, but that is absurd. That is not what the Request stated nor what the Bureaus called for in Comments. While fundamental flaws in the Test of course should be stated, SkyTel pointed to some of these in the Request to show why in Comments SkyTel including its technical

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applications, and is further indicated by the FCC decisions, including in grant of the subject waivers, that the Progeny Disqualification Issue for blatant violation of auction rules has been reserved the Commission so that its interim decisions regarding Progeny are without prejudice to the eventual resolution of the case SkyTel presented. This case is noted in the subject extension Request. Further, SkyTel has interest and standing for all of the reasons it has show for about a decade of Progeny attempts to divert M-LMS spectrum from the Commissions properly designated and much needed ITS radio service purpose. That effect both SkyTel entties as licensees in this radio service, and their public interest goals (including of the nonprofit, Skybridge Spectrum Foundation) to protect and advance ITS wireless. *Progeny is being friviolous in violation of Section 1.52 by suggesting otherwise.*

[6] Further, the FCC seeks in DA 12-209 comments of any "interested parties." Even if Skytel entities do not have Article III standing (which they do, as summarized in part in the preceding footnote), the Comments of parties under DA 12-209 *are for the FCC staff purposes*, and thus cannot be challenged by Progeny on a private-party interest and standing basis.

experts, need to attempt to sort out the defects and address the gaps. This is obvious since DA 12-209 did not ask simply for design or scope flaw but comments on the substance that is in the Test Report.

Indeed, the Opposition admits on page 4 that the Test did not test against what the rule and Commission interpretation of it requires: testing against existing Part 15 device systems (not simulations) and did not use tests to "verify through cooperative testing" with operators of said Part 15 systems. As much as SkyTel advocates licensed ITS radio services and systems, it also defends Part 15 interests since the have an important role in public service. SkyTel commenced direct cooperative testing with Metricom after winning its M-LMS licenses exactly as this rule and Commission interpretation prescribed.[7] There are advantages, not only disadvantages, to a licenses service and an unlicensed one in the same band. There is no policy or technical excuse for Progeny to avoid what the rule and Commission interpretation requires, if it indeed believes what it asserts. The extension Request was entirely correct that this defect is cause to grant the Request. The FCC placed the Test Report out for comments, and obviously did not, at lest on initial review, find these threshold defects, and thus it seeks comments on substance. But that must commence with stating the serious limitations of the Test against said rule and interpretation, and then attempting to project the technology, methods and limited event testing in the Test to what the rule actually requires.

3. As for the Progeny assertion that SkyTel is tardy in submitting the Request, had SkyTel submitted it premature, that could be challenged, as in—how can you know the time needed until you try? In this case, however, SkyTel submitted the Request as soon as it completed a diligent review, including presenting the matter to several experts, in context of the

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[7] This was under contact with costs in the "six-figure" range. However, during this cooperative testing, Metricom filed for bankruptcy and did not recover. Then the FCC, at Progeny request, embarked with rule change proceedings, casting M-LMS adrift to this day.

technical requirement of the waiver grant, relevant FCC rules, the test standard cited in the Request (which the Test obviously does not meet), and could then formulate and present the issues in the Request. The extensive text in the Request reflects this.

In addition, SkyTel has in fact proceeded with analysis for its Comments, with said technical expertise, whose analysis and findings will be included in SkyTel's Comments or in a parallel filing (and in any case, under his identification). The expert is a well known expert including in technical submissions before the Commission on advanced wireless technologies and systems.[8] This will provide a major contribution, especially to OET. This will be substantially truncated if the Request is not granted. It took the FCC years when deciding to allocate LMS for ITS and in the process scores of technical contributions were made. There is no justification for a short comment period on a highly technical matter of consequence to major amounts of spectrum nationwide, unless the FCC decides to effectively eliminate the subject rules the Test purports to satisfy.

In addition, the standard here is not solely a private-parties interest and whether those were timely pursued up to the Request, as Progeny suggests, but whether the FCC's interests for which is seeks Comments is served by grant of the Request.

4. Progeny further diverges into issues of M-LMS construction and speculation as to what SkyTel's plans may be. That is not an issue in this proceeding, our under the FCC's call for comments.

5. If Progeny means that it will give back its licenses if not constructed under the current deadline, then it can state that commitment and based on that, seek expedited action on a decision as to the Test Report. Further, the Progeny licenses have not even been renewed yet,

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[8] SkyTel expects another expert may also be able to complete comments if the Extension is granted. He designs advanced Part 15 devices and systems.

and the argument Progeny made for the renewal does not contain initially or in any amendment, an assertion of the Progeny waivers-need case; thus, the renewal requests lack foundation. Progeny is simply introducing here another irrelevant issue to the subject extension Request.

Progeny could and should have years ago given up its futile and baseless attempts to change the M-LMS radio service with bogus technical and policy assertions,[9] stopped damaging and restraining its competitors that seek to fulfill Commission and Congressional purposes of ITS, and proceeding with exactly what it pretends to have bought in the M-LMS auction: licenses issues for Intelligent Transportation Radio Service, which are not flexible commercial mobile radio services (co-equally for vehicles and other things, etc.) and were allocated to provide the nation's only wide-area radio service for ITS. Had Progeny not cheated to get the licenses, this decade-plus of nonsense would not have happened. Had it at least not played further games after it first got the licenses by tricks, and instead proceeded to use the licenses for ITS under the rules the FCC created after years of extensive policy and technical debate, it would not be in the position it is now in-- trying to avoid scrutiny by even more smokescreens, and employing a Test which clearly fails to meet the very language cited in the grant of the waiver request- citing to the Commission interpretation of the testing regulation.

Conclusion

For reasons in the extension Request and further showed above, the Request should be fully granted, or if not, the Bureaus should grant as much of the requested extension period as possible.

[Execution on next page.]

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[9] Little more than jargon and lobbing, with absurd assertions that GPS "obviated" M-LMS for ITS, contrary to the Commission's obviously sound finding that GPS does not provide two-way or any communications, nor is it very accurate, etc.

Respectfully submitted, March 13, 2012,

Skybridge Spectrum Foundation, by
[Filed electronically. Signature on file.]
Warren Havens, President

Telesaurus Holdings GB LLC, by
[Filed electronically. Signature on file.]
Warren Havens, President

Environmentel LLC (formerly known as AMTS Consortium LLC), by
[Filed electronically. Signature on file.]
Warren Havens, President

Verde Systems LLC (formerly known as Telesaurus VPC LLC), by
[Filed electronically. Signature on file.]
Warren Havens, President

Intelligent Transportation & Monitoring Wireless LLC, by
[Filed electronically. Signature on file.]
Warren Havens, President

V2G LLC, by
[Filed electronically. Signature on file.]
Warren Havens, President

Warren Havens, an Individual
[Filed electronically. Signature on file.]
Warren Havens

Each Petitioner:

2509 Stuart Street, Berkeley, CA 94705
Phone: 510-841-2220. Fax: 510-740-3412

Unless inaccurate practice is intended and invited, these are not "*Havens*" individually or in the aggregate. Each undersigned entity is a separate legal entity, with different ownership, financial, asset and other elements, shown in these entities various licensing disclosures. In addition, Skybridge is a fully nonprofit corporation under IRC §501(c)(3) no part of whose assets may be used or distributed for the benefit of any private individual or for-profit entity, including the other SkyTel entities. Skybridge is not permitted under law to provide any benefit to said other entities and is not their "affiliate" under FCC and nonprofit law. *As previously stated in various FCC proceedings, each SkyTel entity objects to the FCC and others, characterizing these entities as "Havens."* In FCC formal proceedings, unless good cause is asserted, the parties (and FCC staff) should respect elements of law outside FCC jurisdiction. Legal entities' character, differences, names, etc. are under State law, and in the case of a most nonprofits like Skybridge, also under federal IRC-IRS law.

Certificate of Service and Notification

I, Warren Havens, certify that on this 13th day of March 2012, caused to be served by placing into the USPS mail system with first-class postage affixed, unless otherwise noted, a copy of the foregoing pleading (reply) to the following:[10]

A copy will also be emailed to Mr. Olcott, and a voice notification given, each on the morning of March 13, 2012.

Progeny LMS, LLC
2058 Crossing Gate Way
Vienna, VA 22181
ATTN Carson Agnew

Squire Sanders (US) LLP
Bruce A Olcott , Esq
1200 19th Street, N.W.
Washington, DC 20036

[Filed electronically. Signature on file.]

_____
Warren Havens

[10] The mailed copies being placed into a USPS drop-box today may not be processed by the USPS until the next business day.